

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rulemaking to implement the provisions of
Public Utilities Code § 761.3 enacted by
Chapter 19 of the 2001-02 Second Extraordinary
Legislative Session.

Rulemaking 02-11-039
(Filed November 21, 2002)

ORDER ADDING RESPONDENTS

On November 21, 2002, the Commission opened this proceeding for the purpose of implementing Pub. Util. Code § 761.3, as enacted by Senate Bill (SB) X2 39.¹ Among other things, this law requires that the Commission (1) implement and enforce operation and maintenance standards adopted by the California Electricity Generation Facilities Standards Committee for electric generating facilities, and (2) enforce California Independent System Operator outage scheduling protocols. (§ 761.3(a).)²

¹ All statutory references are to the Public Utilities Code, unless specified otherwise.

² SB X2 39 also amends § 362 to direct that “in proceedings pursuant to Sections 455.5, 851, or 854, the commission shall ensure that facilities needed to maintain the reliability of the electric supply remain available and operational, consistent with maintaining open competition and avoiding an over concentration of market power.” Further, amended § 362 provides that “the commission shall require that generation facilities located in the state that have been disposed of in proceedings pursuant to Section 851, are operated by the persons or corporations who own or control them in a manner that ensures their availability to maintain the reliability of the electric supply system.”

Facilities covered by this law include, with limited exceptions, all electric generation facilities “owned by an electrical corporation or located in California.” (§ 761.3(a).)³ An electrical corporation includes “every corporation or person owning, controlling, operating, or managing any electric plant for compensation within” California, with some exceptions. (§ 218(a).)⁴

Our Order Instituting Rulemaking (OIR) names three utilities, and five other entities, as respondents. Further, it says “owners and operators of divested plants will be respondents in this rulemaking.” (OIR, mimeo., page 4.) Attachment A states the current appearance for each of the eight respondents based on the OIR, appearances at the Prehearing Conference (PHC), creation of the service list as a result of the PHC, and resolution of service list issues pursuant to the Scoping Memo and Ruling dated February 19, 2003.

³ Exceptions include (a) nuclear-powered plants, (b) qualifying facilities, (c) generation installed exclusively to serve a customer’s own load, (d) facilities owned by a local publicly owned electric utility, (e) public agency electric facilities that generate electricity incidental to the provision of water or wastewater treatment, and (f) facilities owned by a city and county operating as a public utility. (§ 761.3(d) and (h).)

⁴ Exceptions include (a) where electricity is generated on or distributed by the producer through private property solely for its own use or the use of its tenants and not for sale or transmission to others, (b) a corporation or person employing cogeneration technology or a non-conventional power source for limited purposes, (c) a corporation or person employing landfill gas technology for limited purposes, (d) a corporation or person employing digester gas technology for limited purposes, or (e) a corporation or person employing cogeneration technology or non-conventional power sources that physically produced electricity prior to January 1, 1989, and furnished that electricity to immediately adjacent real property for use thereon prior to January 1, 1989. (§ 218(a) – (e).) These exceptions are generally already within the exceptions covered by § 761.3(d) and (h).

The Commission has now become aware of other public utilities, electrical corporations, and owners and operators of divested plant in California subject to § 761.3. As a result, this order names other entities as respondents. Each new respondent shall be added to the service list as an appearance without delay.

Waiver of Comment Period

This order amends the original OIR by adding respondents. Just as an initiating OIR is not subject to public review and comment under Pub. Util. Code § 311(g)(3), this order amending the initiating OIR will not be released for public review and comment.

Assignment of Proceeding

Carl W. Wood is the Assigned Commissioner and Burton W. Mattson is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. This rulemaking proceeding involves Commission (a) implementation and enforcement of operation and maintenance standards adopted by the California Electricity Generation Facilities Standards Committee for electric generating facilities, and (b) enforcement of California Independent System Operator outage scheduling protocols.

2. The OIR names three utilities, and five other entities, as respondents.

3. The Commission has become aware of other public utilities, electrical corporations, and owners and operators of divested plant located in California subject to § 761.3.

Conclusions of Law

1. The Commission must implement and enforce Committee-adopted standards regarding the operation and maintenance of electric generation facilities owned by an electrical corporation or located in California.

2. An electrical corporation includes every corporation or person owning, controlling, operating, or managing any electrical plant for compensation within California, with limited exceptions.

3. Additional respondents should be named in this proceeding.

4. This order should be effective immediately to bring additional respondents into this proceeding without delay.

IT IS ORDERED that:

1. Each entity identified in Attachment B is made a respondent to this proceeding. Each respondent in Attachment B shall be added to the appearance portion of the service list effective immediately. The Commission's Process Office will, as soon as reasonably possible, modify the service list to reflect the information in Attachment B, and post the updated service list on the Commission's web page.

2. Each respondent named in Attachment B shall review the appearance information in Attachment B, and shall seek corrections or changes by motion filed and served within 10 days of the date of this decision. Responses to any such motion shall be filed and served within five days of the date any such motion is filed. Process Office will modify the service list as soon as possible upon the granting of a motion for correction or change.

3. This order shall be served on all parties and persons on the service list for this proceeding. In addition, the Executive Director shall cause a copy of the original Order Instituting Rulemaking to be served on each respondent named in Attachment B, along with this Order Adding Respondents.

This order is effective today.

Dated _____, at San Francisco, California.

ATTACHMENT A

R.02-11-039

RESPONDENTS

LINE NO	OWNER	UNIT NAME	APPEARANCE [1] [2]
1	PACIFIC GAS AND ELECTRIC COMPANY		Sylvia D. Gardner, Sebastien S. Csapo, Janet C. Loduca appearing for Pacific Gas and Electric Company
2	SOUTHERN CALIFORNIA EDISON COMPANY		Larry R. Cope, Douglas Porter, Mark Minick, Brian Katz appearing for Southern California Edison Company
3	SAN DIEGO GAS AND ELECTRIC COMPANY		Meredith Allen, Lisa Urick, Joseph Klobberdanz, Gina Dixon appearing for San Diego Gas and Electric Company
4	AES AES Alamitos, LLC AES Huntington Beach, LLC AES Redondo Beach, LLC	Alamitos, Huntington Beach, Redondo Beach	Peter Hanschen appearing for AES Alamitos, LLC; AES Huntington Beach, LLC; and AES Redondo Beach, LLC
5	DUKE ENERGY NORTH AMERICA	Oakland Moss Landing Morro Bay South Bay	Douglas K. Kerner appearing for Duke Energy North America

6	DYNEGY/NRG: El Segundo Power LLC Long Beach Generation LLC Cabrillo Power I LLC Cabrillo Power II LLC	El Segundo Long Beach Cabrillo	Brian Cragg, Gregory T. Blue appearing for El Segundo Power, LLC; Long Beach Generation LLC; Cabrillo Power I, LLC; and Cabrillo Power II, LLC
7	RELIANT ENERGY	Cool Water Ellwood Etiwanda Mandalay Ormond Beach	Terry J. Houlihan, Brian Walker, Scott Sadler, Kurt W. Bilas appearing for Reliant Energy Coolwater, Inc.; Reliant Energy Ellwood, Inc.; Reliant Energy Etiwanda, Inc.; Reliant Energy Mandalay, Inc.; and Reliant Energy Ormond Beach, Inc.
8	SOUTHERN/MIRANT	Pittsburg Contra Costa Potrero	Theo Pahos, Steve Huhman, Lisa A. Cottle appearing for Mirant Delta LLC; and Mirant Potrero LLC

- [1] Each appearance is based on the appearance taken at the February 10, 2003 prehearing conference (PHC), or the participant identified on the service list for the work of the California Electricity Generation Facilities Standards Committee (Committee). (The Commission in R.02-11-039 maintains the service list for the Committee; see Rulings dated December 10, 2002, and February 19, 2003.) Parties were notified at the PHC that names on the Committee service list would be brought forward and included as

appearances in R.02-11-039. Comments were stated, but no objections were made. Written notice was also provided, along with an opportunity to address the issue or correct errors. (See Ruling dated February 19, 2003.) No party or individual identified for the purpose of appearing for an entity named as a respondent filed an objection.

- [2] For United States postal and electronic mail addresses, see the PHC transcript, or refer to the service list for R.02-11-39 at www.cpuc.ca.gov.

(END OF ATTACHMENT A)

ATTACHMENT B

R.02-11-039

ADDITIONAL RESPONDENTS

LINE NO	OWNER	UNIT NAME	APPEARANCE OR AGENT FOR SERVICE
1	SIERRA PACIFIC POWER		David M. Norris Legal Department Sierra Pacific Power Co., 6100 Neil Road P.O. Box 10100 Reno, Nevada 89511 dnorris@sppc.com
2	PACIFIC POWER AND LIGHT		Paul Capell (503) 813-5334 825 Northeast Multnomah, Room 1600 Portland, Oregon 97232
3	MIDWAY SUNSET COGENERATION COMPANY		Rod Aoki [1] Alcantar & Kahl, LLP 120 Montgomery Street, Suite 2200 San Francisco, CA 94104 415-421-4143 rsa@a-klaw.com appearing for Midway Sunset Cogeneration Company
4	CONSTELLATION GENERATION GROUP		Andrew B. Brown [1] Ellison, Schneider & Harris 2015 H Street Sacramento, CA 95814 916-447-2166 abb@eslawfirm.com Thomas M. Barnett [2] Constellation Generation Group 3501 Jamboree Road, South Tower, Suite 606 Newport Beach, CA 92660 appearing for Constellation Generation Group

5	SEAWEST WIND POWER		Edward E. Maddox [1] Business Development Manager Seawest Wind Power, Inc. 1455 Frazee Road, Suite 900 San Diego, CA 92108-4310 619-293-3340 emaddox@seawestwindpower.com appearing for Seawest Wind Power Inc.
6	ELK HILLS POWER		Kelly M. Morton [2] Sempra Energy 101 W. Ash Street, HQ13 San Diego, CA 92101 Dan A. King [1] Sempra Energy HQ13-D 101 Ash Street San Diego, CA 92101 Appearing for Elk Hills Power, LLC
7	NEXANT		Barney Speckman [2] NEXANT 101 Second Street, 11 th Floor San Francisco, CA 94105 415-369-1017 bspeckman@nexant.com for Nexant
8	MILLENIUM ENERGY		Andrew J. Skaff [2] Law Office of Andrew J. Skaff 1999 Harrison Street, Suite 2700 Oakland, CA 94612-3572 for Millenium Energy
9	CALPINE		Avis Clark [3] Calpine Corporation 4160 Dublin Boulevard Dublin, CA 94568 Lindsey How-Downing [4] DAVIS WRIGHT TERMAINE LLP One Embarcadero Center, Suite 600 San Francisco, CA 94111 415-276-65— lindseyhowdowning@dwt.com for Calpine Corporation

10	WILLIAMS COMPANIES WILLIAMS ENERGY MARKETING AND TRADING		Alex Goldberg [3] Williams Companies, Inc. One Williams Center, Suite 4100 Tulsa, OK 74172 Tim Muller [3] Williams Energy Services One Williams Center, MD 41-3 Tulsa, OK 74172
11	PG&E NATIONAL ENERGY GROUP		John Ford (415) 817-8203 John.Ford@pge-corp.com Legal Department PG&E One Market, Spear Tower, Suite 2400 San Francisco, CA 94105
12	PG&E ENERGY TRADING		John Ford (415) 817-8203 John.Ford@pge-corp.com Legal Department PG&E One Market, Spear Tower, Suite 2400 San Francisco, Ca 94105
13	LA PALOMA GENERATING COMPANY		Eric Eisenman [3] La Paloma Generating Co. 345 California Street, Suite 2600 San Francisco, CA 94104 415-288-5700 eric.eisenman@neg.pge.com for La Paloma Generating Company
14	ENERGIA AZTECA X		Ruben Dario 281-1303 Bosques de Chapultepec Mexico 11580 D. Federal Malenia Espinosa mespinoz@intergen.com
15	SEMPRA		David Follet Sempra Energy 101 Ash Street, HQ 13 San Diego, Ca 92101 Dfollett@sempra.com Fax 619 699-5074 for Sempra Energy

16	FPL ENERGY		Mark J. Smith [5] FPL Energy 7445 South Front Street Livermore, CA 94550 925-245-4231 mark_j_smith@fpl.com appearing for FPL Energy
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- [1] Appearance taken at PHC. Party is now also a named respondent.
- [2] This party is already in the appearance category as a result of being brought forward from a list created and maintained by the Commission for the work of the California Electric Generation Facilities Standards Committee (Committee). Notice of this treatment was provided in the February 19, 2003 Scoping Memo, and no objection was filed.
- [3] Previously on the information only portion of the service list.
- [4] Based on comments served on or about January 17, 2003 regarding proposed maintenance standards for adoption by the Committee.
- [5] Appearance taken at PHC but incorrectly entered into information only. (Transcript page I and 11.) Party is now also a named respondent.

(END OF ATTACHMENT B)